



December 2, 2010

**VIA ECFS**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12th St., SW  
Washington, DC 20554

**Ross A. Buntrock**

Attorney  
202.775.5734 DIRECT  
202.857.6395 FAX  
buntrock.ross@arentfox.com

**Re: Ex Parte Presentation: WC Docket No. 07-135**

Dear Ms. Dortch:

Yesterday, on behalf of Northern Valley Communications, LLC ("Northern Valley"), a South Dakota CLEC, former Commissioner Harold Furchgott-Roth, David Carter and I met with Brad Gillen, Legal Advisor to Commissioner Attwell Baker to discuss the November 30, 2010 comments filed in this docket by former Commissioner Furchgott-Roth.

We discussed the fact that Northern Valley provides wireline and wireless broadband internet access, digital video, local and long distance telephone service, website hosting, computer leasing, conference calling, and will soon provide mobile broadband internet access in rural communities in South Dakota. We also discussed the significant time and expense incurred by Northern Valley in its on-going efforts to end the unlawful self help campaigns of IXC's, such as Qwest and Sprint, which diverts resources from Northern Valley's core business: providing advanced telecommunications services in rural America. The attached PowerPoint summarizes this discussion.

Commissioner Furchgott-Roth reiterated the key findings of his recent comments, which is incorporated by reference herein. His observations include that:

- a. The Commission has yet to explain any compelling need for additional new rules;
- b. Even if the Commission were to explain a theoretical concern, deregulation and competition are the law of the land and a hyper-regulatory approach that forces LECs to discriminate between end users is inappropriate and the Commission should allow market forces to play out;
- c. The specific issues that the Commission raises in the NPRM do not, in fact, support the creation of new rules, particularly with regard to CLECs; and

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d. Several important issues, including IXC self help, are not addressed in the Notice of Proposed Rulemaking and should be addressed if and when the Commission takes any further action.

Commissioner Furchgott-Roth observed that the Commission's tentative conclusion that it could potentially use section 10 forbearance authority to overcome the clear mandate of section 204(a)(3) of the Act in an effort impose further regulatory requirements on LECs that experience an increase in demand is not simply misguided, but in direct contradiction to the intent of Congress. Further, we discussed how the lack of a clear definition of "access stimulation" makes regulation not just extremely difficult to manage in the long term, but also highly likely to produce unintended consequences that would curb economic development opportunities for small business in rural America.

Commissioner Furchgott-Roth also observed that he has not seen any record evidence that substantiates the recent claims by Qwest, TEOCO, and others regarding the purported "costs" of access stimulation or related claims that IXCs are losing money as a result of free conference calling and similar services. Indeed, Commissioner Furchgott-Roth discovered only two discussions in any of the IXCs' publicly-filed 10-K statements, neither of which substantiated the claim that IXC's long distance services were becoming or had become unprofitable as a result of "access stimulation." To the contrary, the public statements demonstrated that the major IXCs are making a profit of several cents per minute on long-distance traffic, even after paying access charges and regulatory fees. Accordingly, we discussed the need for those making these claims to substantiate them through a full disclosure of records, including an analysis of costs **and revenues**. In this regard, we noted that the lack of a clear definition of so-called "access stimulation" has allowed IXCs to expand that definition substantially over the past three years as a means of inflating their estimations of "cost" and, as such, they are inherently unreliable.

Finally, we discussed the vital need for the Commission to reaffirm its long-standing prohibition against self help. We noted that Qwest and Sprint are continuing to engage in self help withholding from Northern Valley, even though Northern Valley has taken voluntary and pro-active steps to lower the rate it charges for switched access services associated with its customers that provide free conference calling. Despite this effort, both Qwest and Sprint persist in their unlawful campaigns.

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If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in dark ink, reading "Ross A. Buntrock". The signature is written in a cursive, flowing style.

Ross A. Buntrock,  
*Counsel to Northern Valley Communications, LLC*

cc: Brad Gillen, Acting Legal Advisor to Commissioner Baker



# NORTHERN VALLEY COMMUNICATIONS

Company Overview

December 1, 2010



## SERVICE AREA

- Competitive provider in northeast South Dakota
- Brown County
  - population-35,000
  - per capita income-\$23,699
  - household income-\$44,619
- Spink County
  - population-7,000
  - per capita income-\$15,728
  - household income-\$31,717



# INVESTMENT & COMMITMENT

- In business since 1997
- \$26,000,000 invested in broadband infrastructure
- 35 employees
- Average wage higher than community average
- Community investment
  - scholarships
  - economic development initiatives
  - community boards



# SERVICES

- Wireline broadband internet access
- Wireless broadband internet access
- Mobile broadband internet access (soon)
- Business Ethernet
- Digital video
- Local and long distance telephone
- Website hosting
- Computer leasing (to those that can't buy)
- Conference calling



# CUSTOMERS

- Serve over 4,000 business and residential customers
- Typical residential customer
  - 14Mb broadband, digital video, voice
- Typical business customer
  - 14Mb broadband, multiple voice lines
- Serve hospitals, clinics, banks, manufacturing, printing, education, agriculture, retail, lodging, and food service





# BROADBAND NETWORK

- DSL, FTTH, and wireless
- Available to all customers
- Speeds up to 14Mb on ADSL2+
- Upgrade to VDSL2 coming soon
- Added features-PC support services, online backups, online bill payment, ESPN3
- Enabling education, employment, and entertainment that would not otherwise be available



## IXC SELF HELP

- We are not “traffic pumpers” -- IXC customers originate and Northern Valley terminates each of the calls at issue
- The nation’s largest telecommunications carriers are engaging in self help as a means of applying economic pressure to small competitive carriers like Northern Valley
- The “little guy” needs the FCC to enforce its previous precedent against self help in order to continue fostering a pro-competitive environment



## IXC SELF HELP

- Northern Valley has been fighting illegal self help tactics for over three years
- IXCs withhold payments for traffic to high-volume end users
- IXCs also withhold payments for traffic that they do not dispute is being terminated to Northern Valley's other residential and business customers
- Northern Valley is being forced to expend considerable sums on litigation



# CONCLUSION

- IXCs should not be allowed to practice self help
- It needs to be clear that pay-and-dispute is the law (especially when the nation's largest carriers are collecting from their customers and refusing to make any payments to small CLECs)
- Treating small competitive companies like RBOC's is not appropriate
- Northern Valley has taken steps to ensure that its business is conducted with the Commission's latest guidance in *Farmers and Merchants*

